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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/230,623	06/14/1999	STEPHEN MAY	P98.3235	4102

7590 12/12/2001

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EXAMINER
WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
1761	11

DATE MAILED: 12/12/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

8W-11

Office Action Summary

Application No.	Applicant(s)
09/230623	MAY ET AL
Examiner	**Group Art Unit**
S. WEINSTEIN	1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☑ Responsive to communication(s) filed on 8/6/2001.

☑ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

☑ Claim(s) 1-10 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☑ Claim(s) 1-10 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____.

☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____.

Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other _____

Office Action Summary

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohba ('252) in view of applicants' admission of the prior art as further evidenced by Poppel et al. ('504), further in view of Quaker Oats (GB '351), Hillebrand et al. (Austral '797), McMahon (GB'351), Q. P. Corp ('677), Q.P. Corp (Jap. '174), Errass (Europe. '046) and Henkel (GB '234) further in view of Waldburger ('254), McGonigle ('174), Cease ('537), Bliley ('086), Stover ('245) and Rogers et al ('094) for the reasons given in the Office Actions mailed 8/29/00, Paper No. 5 and 4/3/01, Paper No. 8 .

All of applicants' urging filed 8/6/2001, Paper No. 10, have been fully and carefully considered but are not found to be convincing. Patentability is not predicated on the number of references cited. Rather, patentability is predicated on what the art taken as a whole teaches. Where teachings relied upon to show obviousness were repeated in a number of references , the conclusion of obviousness was strengthened. See In re Gorman 18 USCQ2d 1888 in this regard. The fact is, the art taken as a whole is replete with examples of packaged products wherein products are placed in a package in the reverse order from which they are desired to be presented

once they are removed from the package. It is also urged that the art taken as a whole does not teach applicants products. This urging is not convincing. Poppel et al. discloses both of the recited components are conventional. The substantially solid foodstuff reads on the gelled meat loaf product of Poppel et al (and applicants' admission of the prior art) and the solid food pieces in a gravy reads on the chunks and gravy of Poppel et al. Poppel et al even discloses the recited solid food piece/gravy ratio. See e.g., Example 4 in this regard. As noted previously, the art taken as a whole teaches it was known to provide composites of solid loaf and chunk so that the solid loaf would clearly support the chunk material. It is also not an unexpected result. It would be expected that a solid loaf would support food pieces. It is also urged that the product maintains its structural integrity as well as separation of one product phase from another. This urging is directed to limitations not found in the claims. The claims do not recite that the two products maintain a clear line of separation between them. They are silent in this regard. The product is recited at one moment in time which could be immediately upon filling. The claims are silent as to the transverse extent of either "layer" or whether the gravy is flowable in the can. Thus, without such recitations, the components could move around. Note, also that the claims only recite that the solid food stuff would be "capable" of supporting the base layer when the pet food product is inverted. This could read on quickly inverting the products in the can, and does not give any indication of non-intermingling layers. Thus, the claims are silent as to non-mixing stratified layers. In any case, the art taken as a whole teaches that it was well established in the art that viscosities can be adjusted if necessary to maintain layers discrete and stratified. It is

also urged that the layered arrangement allows the liquid/solid pieces to come out of a can after the solid layer (which is less messy?) However, the art taken as a whole is replete with examples wherein a liquid layer is added to a container first so that it will come out of the container on top of the solid product. Examples include sauce and pasta, gravy and meat, syrup and ice cream, etc.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CAR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Mr. Weinstein at telephone number (703) 308-0650.

Weinstein/dh

December 6, 2001

Corrected - December 10, 2001

STEVEN WEINSTEIN
PRIMARY EXAMINER
ART UNIT 132 1761
12/12/01